

From: (b) (6) CTR OPNAV, DNS-36
To: [Patterson, Robin L CIV OPNAV, DNS-36](#)
Cc: [Strong, Richard R CIV OPNAV](#); (b) (6) [CIV OPNAV, DNS-36](#)
Subject: RE: appeal FOIA Request – All FY 2013 Quarterly FOIA Report Emails
Date: Friday, September 08, 2017 6:58 00

To address Mr. Hammond's enumerated points:

1 - Per SECNAV 5210.1, Report records of the type in question are required to be maintained for 2 years; per GRS 04-2, Report records of the type in question are required to be maintained for 3 years. In both cases, further retention is allowed for business purposes. WNRMMC was not an echelon II activity and therefore did not directly report to DNS-36. It is reasonable and expected that the records in question would not be maintained by this office. With regard to the release of names, we had no visibility on the presumptive FOIA release by which Mr. Hammond received this record; therefore, we conducted a de novo review of names and came to a differing conclusion in the Reporters Committee balancing test. The disparity in released names is not per se indicative of action in poor faith.

2 - a - As above, I do not believe we had visibility on such a release of records under FOIA. Assuming the record was released under FOIA, it would influence a release determination, but only insofar as we would have visibility of the release.

2 - b - As above.

2 - c - In our review, each PII element was considered under the Reporters Committee balancing test. Due to the nature of various individuals' positions, it is not unreasonable that a Captain's name would be released when other names are not released.

2 - d - While this argument may hold merit with regard to the signature authorities and publicly-posted points of contact, it is not true that every individual involved in the FOIA process has a diminished expectation of privacy.

3 - Report submissions were released. The emails containing those report submissions were not released because, as advised, there is no requirement that such records be maintained, and no such records were present in our filing system.

4 - Insofar as such records exist, the Standard Operating Procedures were released.

5 - This was an oversight on our office's part. Due to the high volume of responsive records in the substantive portion of the request, the need to provide the requester with a copy of his own submitted request was overlooked.

-----Original Message-----

From: Patterson, Robin L CIV OPNAV, DNS-36
Sent: Thursday, September 07, 2017 9:38 AM
To: (b) (6) CTR OPNAV, DNS-36
Cc: Strong, Richard R CIV OPNAV; (b) (6) CIV OPNAV, DNS-36L
Subject: appeal FOIA Request – All FY 2013 Quarterly FOIA Report Emails

Respectfully,

R. Patterson
Head, SECNAV/CNO FOIA/PA Program Office (DNS-36)
CNO Office of The Director, Navy Staff
Organization and Management Division
FOIA/PA Service Center 202 685-0412 DONFOIA-PA@NAVY.MIL

-----Original Message-----

From: (b) (6) @aol.com [mailto:(b) (6) @aol.com]
Sent: Wednesday, September 06, 2017 3:29 PM
To: Patterson, Robin L CIV OPNAV, DNS-36; Julka, Christopher A CIV DON, CIO; Lattin, Grant E CIV OJAG, CODE 14
Cc: (b) (6) @mail.mil; (b) (6) @mail.mil; (b) (6) @aol.com
Subject: [Non-DoD Source] Re: FOIA Request – All FY 2013 Quarterly FOIA Report Emails

Mr. Lattin, appeal is attached and has been sent via FAX to your office. The clock starts today.

Ms. Patterson, Mr. Julka, second chance to search for and release all responsive records without redaction. In good faith, it is clearly in DON interest to do so, so that your office can move on from this. Appeal text is below.

Robert Hammond

(b) (6)
aol.com

September 6, 2017

Office of the Judge Advocate General
General Litigation Division (Code 14)
1322 Patterson Ave., SE, Suite 3000
Washington Navy Yard, DC 20374-5066
Via: <https://foiaonline.regulations.gov>
FAX: 202-685-5472
EMAIL: (b) (6) @navy.mil

Subject: Appeal of FOIA Request – All FY 2013 Quarterly FOIA Report Emails
My Personal Reference Number: FOIA DON 17-A

DON Assigned Agency FOIA Case Number DON-NAVY-2015-006938

References: (a) The Freedom of Information Act (FOIA)

(b) The Privacy Act

(c) CFR 164 526

(d) DoD 5700 7-R, September 1998, DoD Freedom of Information Act (FOIA) Program

(e) DoD 6025 18-R, Jan 24, 2003, DoD Health Information Privacy Regulation

(f) Joint publication of U S Department of Justice, Executive Office of the President and U S General Services Administration of July 2011: "Your Right to Federal Records" (see <http://publications.usa.gov/USAPubs.php?PubID=6080> <<http://publications.usa.gov/USAPubs.php?PubID=6080>>)

(g) DoD 5400 11-R, May 14, 2007, Department of Defense Privacy Program

(h) Department of Justice Freedom of Information Act Guide, May 2004 at Exemption 6 <http://www.justice.gov/oip/foia-guide-2004-edition-exemption-6> <<http://www.justice.gov/oip/foia-guide-2004-edition-exemption-6>>

Dear Sir:

This appeal is submitted under the references above for my FOIA request dated at Enclosure 1, The Agency's reply is at Enclosure 2

This appeal will be timely for judicial review within twenty working days There are also other avenues for redress, particularly in the event that responsive records were deleted subsequent to my request

Records Sought Under the FOIA I am respectfully seeking for Fiscal Year 2013

1 The SOP – FOIA Quarterly Reports and Consolidation Process

2 All four quarterly FOIA Reports submissions emails for Fiscal Year 2013 to the DON PA/FOIA Office from any submitter

3 This request also seeks a copy of this request (which is an agency record) returned in your reply

Basis for Appeal

1 I am appealing that the Agency did not provide any reports records for Walter Reed National Military Medical Center, nor did the Agency conduct any searches for such records Walter Reed's 1st quarterly report submission (obtained separately via FOIA) is at Enclosure 3 The Agency is withholding all four quarterly reports Note that these reports were sent by Bizzell, Judy J CIV US WRNMMC to 'DONFOIA-PA'; Patterson, Robin L CIV OPNAV, DNS-36, cc: Garcia, Della W GS BUMED Also, note that there are no (b)(6) redactions whatsoever

2 I am appealing that the Agency has improperly denied portions of my request under 5 U S C 552(b)(6)

a Every email address that has been redacted is already in the public domain and has been released pursuant to FOIA See Enclosure 4 (October 10, 2013 10:57 AM email from (b) (6) @navy mil Subject: FOIA OFFICE STAND DOWN) as one example of the email addresses that are in the public domain See Enclosure 5, which is the BUMED reply, "RE: Action Item due June 21, 2013 - Quarterly FOIA Reporting" All of the email addresses that have been redacted are already in the public domain via FOIA and cannot be redacted in this document or any other This includes the email address for Garcia, Della W GS BUMED as discussed above

b The agency is redacting the phone numbers of FOIA officers, which are also in the public domain, with many published on public websites

c The Agency is inconsistent in redacting the names of the email submitters See Enclosure 6 where the name of the FOIA Officer is redacted, but the name of Thompson, Scott F CAPT OJAG, CODE 13 is not As noted, the names of FOIA Officers are already in the public domain, via countless determination letters emails, posting on public websites, etc

d There is a clear public interest in the identities of the persons submitting FOIA report data There is no expectation of privacy on the part of the FOIA Officers; their information is already in the public domain and intended to be so

3 I am appealing that the Agency did not release the 1st and 2nd quarterly reports submissions for any component These records are known to be in the Agency's custody, based on records released by some components My request seeks ALL records

4 I am appealing that the Agency did not release the SOP – FOIA Quarterly Reports and Consolidation Process

5 I am appealing that the Agency did not return a copy of my FOIA request in its initial determination letter

Appellate Authority Action Requested I am asking that:

(1) each of the elements of the basis of my appeal be addressed separately;

(2) each element of my appeal be sustained;

(3) my FOIA request be remanded back to the Agency for direct reply to me; and,

(4) I be granted new appellate rights following a subsequent reply by the Agency

With my respect,

<file:///C:/Users/Bob/AppData/Local/Temp/msohtmlclip1/01/clip_image002.jpg>

Robert Hammond

Enclosures:

1 Hammond FOIA Request DON 17-A

2 Agency Initial Determination Letter

3 Walter Reed FY13 1st FOIA Quarterly Report

4 October 10, 2013 10:57 AM email from (b) (6) @navy mil Subject: FOIA OFFICE STAND DOWN; no email addresses or names redacted

5 BUMED reply email, "RE: Action Item due June 21, 2013 - Quarterly FOIA Reporting

6 OJAG - Email 3 (Highlighted)_Redacted

Copy to: Robin Patterson

-----Original Message-----

From: (b) (6) @aol com>

To: (b) (6) @navy mil>; christopher a julka <christopher.a.julka@navy.mil>

Cc: (b) (6) @mail mil>; (b) (6) @mail mil>

Sent: Wed, Aug 30, 2017 7:39 am

Subject: Fwd: FOIA Request – All FY 2013 Quarterly FOIA Report Emails

Dear Ms Patterson,

In good faith, the attached FOIA initial determination is a missed opportunity to do the right thing for DoD, Department of Navy, your office past errors long ago notwithstanding I would like to move on

As of now, you still have that opportunity

Most importantly, please look again more carefully and Promptly release ALL records responsive to my FOIA request related to DON FY 2013 Quarterly FOIA reports records The records are known to be in DON possession

As separate matters, the information that you redacted is already in the public domain via FOIA and DON did not return a copy of my request
In good faith and with my respect,
Robert Hammond
Copy to: No others

From: (b) (6) @aol.com
To: (b) (6) @navy.mil
Cc: (b) (6) @aol.com
Sent: 8/27/2017 8:59:09 AM Eastern Standard Time
Subject: Re: Fwd: FOIA Request – All FY 2013 Quarterly FOIA Report Emails

Dear Ms. Patterson,

I am following up on my request below.

The records that I am seeking were in the agency's possession at the time of my FOIA Request for them. My Request identifies the legal requirement to preserve such records and records of your searches for judicial review. This request is now timely for judicial review. As you know there are also other remedies for redress, if records are deleted.

Thank you so very much for your prompt consideration of my request.

With my respect,
Robert Hammond

In a message dated 8/9/2017 9:35:29 PM Eastern Standard Time (b) (6) @aol.com writes:

Dear Ms. Patterson,

I want to first thank you for your past assistance releasing the Navy FOIA Improvement Plan cited in the Department of Defense Chief Freedom of Information Act Officer Report for 2013. That was refreshingly open and transparent. I truly appreciate it. It appears that Navy has come along way since 2013, evidently due to your efforts, training, reorganizations, etc.

I will greatly appreciate your timely consideration of my request seeking "All FY 2013 Quarterly FOIA Report Email" and related records cited below.

Thank you in advance.

With my best wishes for your continued success and my respect,

Robert Hammond

From: (b) (6) @aol.com
To: donfoia-pa@navy.mil (b) (6) @navy.mil
Cc: (b) (6) @aol.com
Sent: 7/25/2017 9:59:18 PM Eastern Standard Time
Subject: FOIA Request – All FY 2013 Quarterly FOIA Report Emails

Robert Hammond
(b) (6)
@aol.com

July 25, 2017

Department of the Navy via FOIA Online, <https://foiaonline.regulations.gov/> and donfoia-pa@navy.mil

Subject: FOIA Request – All FY 2013 Quarterly FOIA Report Emails

Requester Personal Reference Number: FOIA DON 17-A

References: (a) The Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., as amended,
(b) Joint publication of U.S. Department of Justice, Executive Office of the President and U.S. General Services Administration of July 2011, "Your Right to Federal Records"

(c) The Privacy Act ("PA") of 1974, 5 U.S.C. § 552a, et seq., as amended

(d) DoD 5400 11-R, May 14, 2007, Department of Defense Privacy Program

(e) DoD 5400 7-R, September 1998, DoD Freedom of Information Act (FOIA) Program

(f) DoD 5400 11-R, May 14, 2007, Department of Defense Privacy Program

(g) DoD 6025 18-R, Jan. 24, 2003, DoD Health Information Privacy Regulation

(i) GAO Report GAO-12-828 of July 2012, subject Freedom of Information Act

(j) Department of Justice Handbook for Agency Annual Freedom of Information Act Reports

Dear FOIA Officer,

I am submitting this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., as amended. If you deny all or any part of this request,

please cite each specific exemption you think justifies your refusal to release the information and notify me of appeal procedures available under the law. References cited apply. Please see "preservation of records and searches performed" and "impact of improperly withholding records" below.

RECORDS SOUGHT VIA FOIA

I am respectfully seeking for Fiscal Year 2013:

1. The SOP – FOIA Quarterly Reports and Consolidation Process
2. All four quarterly FOIA Reports submissions emails for Fiscal Year 2013 to the DON PA/FOIA Office from any submitter
3. This request also seeks a copy of this request (which is an agency record) returned in your reply.

BACKGROUND:

Records are likely in the possession of:

Robin Patterson
Head, DON PA/FOIA Office
(b) (6) @navy.mil
FOIA/PA Service Center 202-685-0412
or DONFOIA-PA@NAVY.MIL (FY 2013 email address)

Email subjects may include "FY13 1st FOIA Quarterly Report, etc."

Data in the quarterly reports may include:

1. A) FOIA requests received during quarter:
2. b) FOIA requests processed during quarter:
3. c) FOIA backlog at end of quarter:
4. d) Status of 10 oldest backlogged cases reported on FY12 report

In your reply please separately address by the reference number above how your reply addresses each element of the records sought, including "no records found" for any specific record sought.

Requested Format: I am requesting that documents provided as a single PDF file by return mail via traceable means (i.e., certified mail) that: 1) a signed and dated cover letter citing my personally assigned requester control number addressing only this FOIA request; 2) all responsive documents; 3) a copy of this request in your reply. This Request letter is an agency record in its own right and providing a copy of this request is an integral part of my FOIA request, which helps to ensure that you fully address my request. Please do not combine this request with any other request in your reply. I am requesting that each element of the records sought be specifically addressed in the DHA reply.

Agreement to Pay Fees: I agree to pay fees for searching or copying the records up to \$50. If the fees exceed this amount please advise me of the cost before proceeding. I do not believe that there should be any charge for providing these records, as there is public interest in government operations. I am a private individual not seeking documents for commercial use, such that the following applies: "No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge." I would note that because I am requesting a PDF file, there should not be a per page copy fee. Moreover, there is public interest in the Performance standards of the Deputy General Counsel, Defense Health Agency.

PUBLIC INTEREST: The subject of the requested records concerns "the operations or activities of the government." The disclosure is "likely to contribute" to an understanding of government operations or activities. There is no commercial interest. There is significant public interest in the integrity of FOIA/Privacy Act and certified mail processing procedures and the accuracy of FOIA reporting to the Attorney General of the United States and Privacy Act reporting to Congress.

DOD POLICY –PUBLIC TRUST

Reference (c) states, "DoD personnel are expected to comply with the FOIA, this Regulation, and DoD FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust."

IMPACT OF IMPROPERLY WITHHOLDING RECORDS

Pursuant to FOIA:

"Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends." 5 U.S.C. § 552(a)(4)(F)(i)

PRESERVATION OF RECORDS AND SEARCHES PERFORMED: Please preserve all responsive or potentially responsive records and records of your searches in your FOIA case file until the statutory date for judicial review has passed (should that be necessary) or in accordance with a NARA approved records schedule, if longer.

Records of responsive searches would include but not be limited to:

Searches conducted for each specific record sought and all other records known to the Agency, including dates, manner of searching, responsible agent or employee conducting each search and the results thereof.

LEGAL FRAMEWORK OF FOIA

1. The definition of "records" includes:

"[A]ll books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them " 44 U S C § 3301 (emphasis supplied)

2 FOIA requires that "each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person" 5 U S C 552(a)(3)(A)

3 FOIA requires that "each agency shall establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request" 5 U S C § 522(a)(7)(A)

4 FOIA requires that each agency shall "establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including the date on which the agency originally received the request; and an estimated date on which the agency will complete action on the request 5 U S C § 522(a)(7)(B)

5 FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of "unusual circumstances" meriting additional time for responding to a FOIA request 5 U S C 552(a)(6)(A)(ii)

6 FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U S C 552(a)(6)(A)(i) - (ii). See also 5 U S C § 552(a)(6)(C)

7 FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant

8 Regarding the names of the FOIA requesters, the courts have held that under the FOIA requesters do not have an expectation of privacy *Stauss v IRS*, 516 F. Supp. 1218, 1223 (D.D.C. 1981),

9 Under FOIA, the federal agency has the burden of sustaining its actions 5 U S C § 552(a)(4)(B)

10 Pursuant to FOIA, a Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in an action thereunder 5 U S C 552(a)(4)(E)

11 Department of Justice (DOJ) has issued a handbook addressing FOIA Annual Reports. See DOJ, Handbook for Agency Annual Freedom of Information Act Reports, "Disposition of FOIA Requests," (available at http://www.justice.gov/sites/default/files/oip/pages/attachments/2014/11/04/department_of_justice_handbook_for_agency_annual_freedom_of_information_act_reports.pdf) ("DOJ Handbook")

12 Among other things, the DOJ Handbook states, "All requests (perfected and non-perfected), appeals, and consultations that were pending at any time during the relevant fiscal year [October 1st through September 30th] will be captured "

13 The DOJ Handbook also states:

"[E]ach agency is ultimately responsible for the accuracy and completeness of its Annual FOIA Report. It is therefore essential for agencies to take steps that will ensure that they are adequately tracking all of the information necessary to complete the Annual FOIA Report sections detailed below. Agencies that utilize a tracking or case management system for this purpose are responsible for ensuring that the system they are using can produce an accurate Annual FOIA Report that is in compliance with the law and Department of Justice guidance " DOJ Handbook, at 3

I believe that I have adequately described the records that I am seeking. If you believe that my request is unclear, if you have any questions, or if there is anything else that you need from me to complete this request in a timely manner, please contact me in writing, so that I may perfect my request. If you deem that any portion of my request is unclear, answer the remaining portions and I will perfect a request for additional material as needed.

Thank you in advance

With my respect,

Robert Hammond